

- "1. Whether the disposition, No. 8 of process, so far as in favour of the defender, Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the defenders, David Reid and the said Mrs Martha Hopkins or Reid, was an alienation by the said David Reid to conjunct and confident persons of property belonging to him, without true, just, or necessary cause, to the hurt and prejudice of prior creditors of the said David Reid, *now represented by the pursuer*, contrary to the Act 1621, cap. 18?
- "2. Whether the defender David Reid, *when insolvent*, procured the said disposition, No 8 of process, to be executed, so far as in favour of the defender, Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the said David Reid and the said Mrs Martha Hopkins or Reid, fraudulently to disappoint the legal rights of his creditors, *now represented by the pursuer*?
- "3. Whether the disposition, No. 11 of process, so far as in favour of the defender Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the defenders, David Reid and the said Mrs Martha Hopkins or Reid, was an alienation by the said David Reid to conjunct and confident persons of property belonging to him, without true, just, or necessary cause, to the hurt and prejudice of prior creditors of the said David Reid, *now represented by the pursuer*, contrary to the Act 1621, cap. 18?
- "4. Whether the defender David Reid, *when insolvent*, procured the said disposition, No. 11 of process, to be executed, so far as in favour of the defender, Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the said David Reid and the said Mrs Martha Hopkins or Reid, fraudulently to disappoint the legal rights of his creditors, *now represented by the pursuer*?

Agents for Pursuer—Neilson & Cowan, W.S.

Agent for Defender—D. F. Bridgeford, S.S.C.

## SECOND DIVISION.

### PICKFORD AND CO. v. THE CALEDONIAN RAILWAY COMPANY.

*Railway and Canal Traffic Act, 17 and 18 Vict. c. 31—Contravention.* Circumstances in which a complaint by a company of carriers against a railway company, for giving facilities to their rivals in business, in contravention of the Railway and Canal Traffic Act, dismissed, the petitioners' averments, so far as relevant, not having been proved.

This was a petition and complaint presented under the 17 and 18 Vict. cap. 31 (the Railway and Canal Traffic Act, 1854). The petitioners are carriers in London, Edinburgh, Glasgow, and elsewhere. The petition set forth that they had, in the year 1862, come to an agreement with the respondents, by which the latter agreed to allow to the petitioners the same rates of cartage per ton for goods which they might cart to and from the Caledonian Railway Company's stations as the said Caledonian Railway Company allowed to their own carters or contractors for the time, it being thereby understood and agreed that the Caledonian Railway Company should give, as they thereby agreed to give, all goods at their stations to the petitioners to deliver which might be addressed to or consigned to them,

whether at such stations or to the petitioners' address. So far as regarded the stations at Edinburgh and Glasgow, it was in the said agreement stated that the Caledonian Railway Company's then contractors were Messrs J. & P. Cameron in Glasgow and Edinburgh, and Messrs Robb, Greig, and Company, and J. M'Fadyen in Glasgow, and a schedule of the then existing rates of cartage paid by the said Caledonian Railway Company to their said contractors was appended to the said minute of agreement, the said cartage per ton being only on goods the rates for which between consigner and consignee included the cartage for collection and delivery, all goods carried at station to station rates being excluded from the said agreement, in the same way as such station to station goods were excluded from the agreements between the said Caledonian Railway Company and their said contractors. It was thereby further agreed that the said arrangement should be retrospective as well as applicable to the future, so that the petitioners should draw the like sums for cartage theretofore performed by them since the expiry of their contract with the Caledonian Railway Company. The petition further set forth that the said Caledonian Railway Company, however, have not only failed to implement the said agreement, but have also, in violation and contravention of the provisions of the Acts of Parliament after quoted, given undue and unreasonable preference and advantage to themselves, in their capacity of common carriers, and to other persons and companies, over the petitioners, and have imposed on the petitioners undue and unreasonable prejudice and disadvantage, thereby entailing on the petitioners a heavy pecuniary loss. In particular, the said Caledonian Railway Company have contravened the provisions of the said Acts of Parliament, *inter alia*, in the following respects:—(1.) They have in some instances refused to hand over to the petitioners at their station in Buchanan Street, Glasgow, for delivery by the petitioners, goods which either arrived there labelled, consigned, or addressed to the petitioners' care, or with respect to which the consignees thereof directed them to hand over the same to the petitioners for delivery. (2.) The said railway company further afford to other carriers who are the competitors and rivals of the petitioners in business, facilities for lifting goods from their stations which they refuse to the petitioners, and do all in their power to obstruct the petitioners in lifting and carting goods from their said stations. (3.) The said railway company give an undue preference and advantage over the petitioners to other carriers, their competitors in business, inasmuch as they receive payment from the said competitors at the end of the month, or other stated period, of the charges on goods consigned to them during the month; while they compel the petitioners to make payment to them of the particular charges applicable to each package of goods consigned to the petitioners before such package is removed from the station of the railway company, or placed on the cart of the petitioners; and while thus exacting from the petitioners separate and instant settlement of charges payable to the railway company, they refuse to make similar settlements of charges and overcharges payable to the petitioners. (4.) The railway company also afford to the rivals of the petitioners in business, accommodation at their said station for carrying on their business, which they refuse to the petitioners. Various instances were given in the petition of the alleged violation

of the said agreement and contravention of the Acts of Parliament. The petition narrated the 33d section of the 8 and 9 Vic., c. 33, and the 2d and 3d sections of the Railway and Canal Traffic Act, 1854 (17 and 18 Vic., cap. 31). The second clause of the latter Act is to the following effect:—"Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving, and forwarding, and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic in any respect whatsoever; nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." By the 3d section of the same Act it is provided that "it shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made, in violation or contravention of this Act, to apply in a summary way, by motion or summons in England to her Majesty's Court of Common Pleas at Westminster, or in Ireland to any of her Majesty's Superior Courts in Dublin, or in Scotland to the Court of Session in Scotland, as the case may be, or any Judge of any such Court;" and power is given to such Court or Judge to hear and determine the matter of such complaint; and for that purpose such Court or Judge is authorised, if thought fit, to direct and prosecute inquiries, in manner therein mentioned, by such engineers, barristers, or other persons, as they shall think proper. And it is also enacted that "if it be made to appear to such Court or Judge on such hearing, or on the report of any such persons, that anything has been done, or omission made, in violation or contravention of this Act, by such company or companies, it shall be lawful for such Court or Judge to issue a writ of injunction or interdict restraining such company or companies from farther continuing such violation or contravention of this Act, and enjoining obedience to the same." And it is also enacted that "such Court or Judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such Court or Judge shall determine, not exceeding for each company the sum of £200 for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such monies shall be payable, as the Court or Judge shall direct, either to the party complaining or into Court, to abide the ultimate decision of the Court, or to her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order, in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any Superior Court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such Court or Judge may order or determine that all or any costs thereof, or therein incurred, shall and may be paid by or to the one party to the other, as such Court or Judge may think fit."

The petition prayed the Court to find that the proceedings complained of were in violation and contravention of the said Acts of Parliament, and particularly of the said "Railway and Canal Traffic Act 1854," by the said Caledonian Railway Company, and to interdict the said company from further continuing the said violation and contravention of the said Act, and to enjoin obedience to the same; and further, to interdict the said Caledonian Railway Company from giving any undue and unreasonable preference and advantage to themselves or other persons over the petitioners, or from subjecting the petitioners to any undue and unreasonable prejudice and disadvantage in the matters libelled; and further, to adjudge in terms of the sections of the Act of Parliament previously quoted.

To this petition the respondents were allowed to give in answers, in which they objected to the relevancy of the petition as not containing statements sufficient to infer a contravention of the Act, and in which they also denied the facts stated by the petitioners.

The Court, before answer, and of consent, allowed a proof, and remitted to Mr Robert Lee, advocate, to take the same and to report upon it, in terms of the statute, and at the same time recommended him to preserve short notes of the evidence to be transmitted to them if required. This proof having been taken, and Mr Lee having reported, parties were heard upon the report and the notes of evidence which had been taken by Mr Lee. To-day the case was advised. The facts which came out in evidence in reference to the grounds of complaint sufficiently appear from the opinion of

The LORD JUSTICE-CLERK, who said—When this complaint first came before us it was quite obvious that some of the allegations contained in it were relevant, and required to be sent to proof, though there were others about which there might have been considerable room for doubt. Some of the charges being undoubtedly relevant, the respondents consented to a proof being taken before answer. We took the course authorised by the Act to remit to a gentleman in whom we had confidence to take the proof and report, and preserve notes of the evidence, which Mr Lee in making his report has also laid before us. In making that report he found it necessary to refer to portions of the evidence, and it was proper that we should have it before us. We are now to consider both the relevancy of the case and the evidence. It appears to me that the case has been reduced upon proof to very narrow limits. Omitting in the meantime the first ground of complaint, the remaining three may be very easily disposed of. The second ground of complaint is—(reads). Now, that is a relevant ground of complaint, because if that were true there would be a breach of the statute. The question is whether the allegations are proved. The matters of fact disclosed in evidence upon this branch of the case are that the railway company is in use to deliver goods in Glasgow by means of carts through agents employed by them—Messrs Cameron & Co. This is just the railway company performing the business of carters. Cameron & Co. are not common carriers exercising an independent trade; they are merely servants or agents of the company in performing carriage undertaken by the company. What is complained of is that goods brought to Glasgow to be carted by the company's carters are divided in the premises of the company into lots for distribution in the districts of the town, while no division is made of Pickford & Co.'s goods. This is said

to give an undue advantage on the one side, and to subject the petitioners to an undue disadvantage upon the other. In this question it is impossible to leave out of view the amount of cartage done by the two parties thus contrasted. It is in evidence that in October and November 1882 the goods carted from the station by Cameron & Co. amounted to 152 and 141 tons respectively as the daily average, while Pickford & Co. only carted 9 and 10 tons respectively per day. Now, the arrangement for the division of the goods at the station for distribution over the town may be very useful for large quantities, and not at all necessary when the quantity was small. But I do not rest my opinion upon that consideration. The Caledonian Railway Company in this matter use their own premises for their own carters. They are not bound to give the use of their premises to other carters to facilitate their operations. Pickford & Co. may use their own premises for such purposes. The Caledonian Company is not bound to give them the use of theirs.

The third ground of complaint is as to the way in which the respondents settle accounts with the petitioners as compared with others. It is only necessary to say that there is no evidence whatever to support this charge.

The fourth ground of complaint is—(reads). Upon this matter it appears that there are two small boxes within the premises of the railway company used by the company's carters for the transaction of their business in carting. This objection falls to be dealt with in the same way as that under the second head—viz., the division of the goods. In this matter of the boxes as in that, the company were not giving one trader an undue advantage over another. They were merely affording their own servants facilities for transacting their own business.

There remains only the first ground of complaint, that is—(reads). There was appended to the petition a very detailed statement of 62 cases in which an alleged contravention of the statute had occurred. Now, it is admitted that in so far as these are concerned seven of them only have any evidence to support them. These are cases in which goods were not labelled or addressed to the petitioners, but in which, as they allege, the goods were consigned to them; and they maintain that with regard to these seven cases the company have contravened the statute. The question is, is that true? It appears to me that in treating of this matter the petitioners have left wholly out of view the interests of the sender and receiver of goods, seeming to think that goods were carried merely for the benefit of the carrier. What are the facts in connection with these cases? A certain document was handed by the Midland Railway Company to the Caledonian Company which has been called an invoice. This is a new use of that word, and one that is apt to mislead. The document rather corresponds in character to a ship's manifest, or to what in the old coaching days used to be called a way-bill. Now, with this way-bill the sender of goods has nothing whatever to do. He knows nothing of it and cannot be bound by it. We must take it that the sender transmits his goods to the address of his Glasgow consignee. In the case which was taken as an example the goods were addressed to the consignee by his name and address in Glasgow. The only way in which the petitioners could pretend an interest in these goods was that in a column of the way-bill headed "To whose care," there occurred the entry "P. & Co." which there could be no

reasonable doubt meant the petitioners. There is no evidence who made that entry. The petitioners say they did not; that they did not take the goods to the station from which they started. It is not alleged that the sender made the entry, so that it must have been made by the Midland Company itself. Is then that company to bind the Caledonian Company in opposition to the wishes of the consignor who desires the goods to be delivered at a particular address in Glasgow? It appears to me that so far from this being a good ground of complaint against the respondents, that they would not have been justified in attending to such orders. Suppose, in place of the petitioners, the column had contained the name of some carriers in whom the respondents had no confidence, would they have been justified in handing over the goods to them? They might by so doing have involved themselves in responsibility of a very serious kind. There is no evidence that the respondents refused to deliver to the petitioners goods consigned to them, and therefore no room for complaint on this head. There is indeed one individual case in which goods did bear to be consigned to Pickford & Company. In this case the way-bill bore in the column appropriated to the name of the consignee "Andrew Duggans of Glasgow, care of P. & Co." If this had represented a system, I should have been inclined to say it was illegal. I express no opinion whether it would have been a contravention of the Act of Parliament. The Caledonian Railway Company, however, do not propose to repeat it, and as an isolated case I do not attach much importance to it. It certainly would not justify a complaint such as we have before us. But then it is further said that when consignees of goods had directed goods to be delivered to the petitioners, the respondents had not done so. The case was that a general order had been given by a consignee as to the delivery of all goods consigned to him. This falls under the first branch of the case of *Wannan v. The Scottish Central Railway Company*, 2 M'Ph. 1373, in which the Court had held that a railway company was not bound to give effect to such general directions. Apart from this, however, I have the greatest difficulty in thinking that a failure on the part of the respondents to obey the orders of a consignee would entitle the petitioners to complain. The matter is, however, ruled by the case of *Wannan*. That exhausts the whole of the petition upon the report and proof, and when I consider the miserably small size to which this clamorous petition and complaint has shrunk, I cannot help characterising the proceedings as most frivolous.

The other Judges concurred; and the Court therefore, seeing that the petitioners had failed to establish any grounds of complaint to justify the interference of the Court, refused the prayer of the petition and found the respondents entitled to expenses.

Counsel for Petitioners—Patton and A. Moncrieff. Agents—Wilson, Burn, & Gloag, W.S.

Counsel for Respondents—Clark and Johnstone. Agents—Hope & Mackay, W.S.

Friday, June 1.

#### FIRST DIVISION.

MAXWELL AND OTHERS *v.* MAGISTRATES  
OF DUMFRIES.

*Bridge Dues—Right to Levy—Usage.* Held that the extent of a right to levy Bridge Dues was